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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA  
754 FEDERAL COURTS BUILDING  
ST. PAUL, MINNESOTA 55101

PAUL A. MAGNUSON  
JUDGE

US EPA RECORDS CENTER REGION 5



514315

May 2, 1985

The Hon. Crane Winton  
1307 Mount Curve Avenue  
Minneapolis, Minnesota 55403

Re: U.S.A. v. Reilly Tar

Dear Judge Winton:

Recently I have received a series of letters regarding a perceived ambiguity in Paragraph 10 of this court's Revised Case Management Order. I believe you have received copies of those letters. Presently, Paragraph 10 states that:

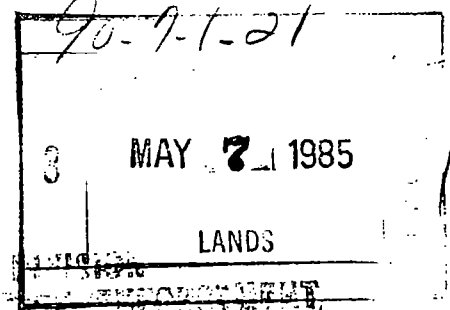
...The "further" experts are limited to the following:

(a) Experts to be named by Reilly Tar:

(1) Analytic Chemist.

See Par. 10 Case Management Order. Shortly after the order was sent out, I received a letter from Reilly Tar seeking a correction of Paragraph 10 which would permit REilly Tar to include experts disclosed in Mr. Schwartzbauer's April 5, 1985 letter to this court.

Reilly Tar has taken the position that I made an "inadvertent omission" by not including the experts listed in Mr. Schwartzbauer's April 5 letter in Paragraph 10. I believe it is fair to say that the government plaintiffs feel that Paragraph 10 represents a "considered" decision by this court on the ability of Reilly Tar to call experts at trial. I am writing this letter to inform you that Paragraph 10 does not represent an "inadvertent omission" or a "considered" decision. One cannot omit or consider something until one first thinks about it. I never thought about the issue on way or another in drafting the Case Management Order.



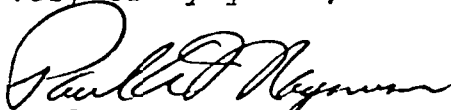
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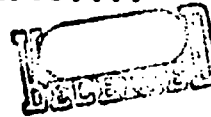
I believe that you are in a much better position than I am in to rule on this controversy and would request that you do so. In considering the issue, do not feel bound by the existing language of Paragraph 10 of the Case Management Order. By copy of this letter I am informing counsel of my decision to refer this matter to you.

On a related matter, I received a letter from Mr. Coyne suggesting that Paragraph 12 of the Case Management Order be amended to clarify that only motions to compel are permitted up until May 17, 1985 and not full blown discovery. The previous language of Paragraph 12 was ambiguous. All parties agree to the change in Paragraph 12. Accordingly, Paragraph 12 will be revised to read as follows:

All motions to compel regarding phase I shall be filed by May 17, 1985. All depositions shall be completed by June 30, 1985....

Very truly yours,

  
Paul A. Magnuson



CC: Reilly Tar Counsel